MEMORANDUM

September 22, 2008

To: Jenny Liaw

Cc: Randy Chafln, Chris Austin, and Greg Angelo

From: Dave Freudenberger and Cindy Yan

Re: Peer Review of Fiscal Impact Analysis and Preliminary Feasibility Analysis for the Tidewater Crossing Master Development Plan Project

PURPOSE

The Development Planning and Financing Group, Inc. (DPFG) has prepared a fiscal impact analysis and a preliminary feasibility analysis for the Tidewater Crossing project (Project) as part of the Project’s master development plan approval process. Goodwin Consulting Group, Inc. (GCG), working under a contract with EDAW, was retained by the City of Stockton (City) to conduct peer reviews of the fiscal impact analysis (FIA) and the preliminary feasibility analysis (PFA) for the Project. As part of the peer reviews, GCG evaluated the assumptions, methodologies, and conclusions applicable to each study. GCG applied standard industry practices along with the City’s approved polices, guidelines, and templates to ensure that the results of the FIA and PFA are reasonable and consistent with the City’s approved methodologies and assumptions. This memorandum summarizes GCG’s findings from the reviews of the FIA and PFA.

PROJECT DESCRIPTION

The Project consists of approximately 909 acres located within unincorporated San Joaquin County, outside of Stockton’s city limits; it is situated within the City’s Sphere of Influence, however, and is expected to be annexed into the City prior to development. The Project site is generally bounded by the Stockton Metropolitan Airport to the north, State Route 99 to the east, Union Pacific Railroad to the west, and East French Camp Road to the south.

The residential portion of the Project is expected to include a total of 2,663 residential units, which comprises of 1,530 standard lot single family residential units, 864 small lot
detached single family units, and 269 multifamily units, and is anticipated to have a population of 8,000 new residents at buildout. With approximately 5.5 million square feet of commercial and industrial uses on 241 acres, the Project is also expected to produce 5,470 new jobs from these two land uses.

FISCAL IMPACT ANALYSIS

After a detailed review of two draft FIsIs (dated August 6, 2008, and August 26, 2008), GCG identified several issues and concerns. While most of the issues were minor in nature and quickly resolved, there were two significant issues — adherence to the FIA template and guidelines and the Project’s absorption schedule — that materially affected the results of the FIA. GCG worked closely with DPFG, the Project developers, and City staff to resolve these two significant issues.

As a result of collaborative effort, DPFG prepared another FIA dated September 19, 2008. In this FIA, DPFG addressed GCG’s concerns by incorporating the City’s service cost estimates and by preparing a sensitivity analysis that increased the Project’s buildout period by approximately 50%. In addition, DPFG made other adjustments to address some of the other issues identified by GCG and to reflect Project changes since the initial draft was prepared.

GCG has extensively reviewed DPFG’s September 19, 2008, FIA and concludes that its assumptions and methodologies are consistent with the City’s FIA template and guidelines. Although the FIA projects an annual recurring deficit both during development and after buildout, a combination of financing mechanisms are identified to mitigate all projected deficits to the City.

PRELIMINARY FEASIBILITY ANALYSIS

DPFG prepared an initial PFA, dated August 5, 2008, and a second PFA dated August 28, 2008. Similar to the FIA, GCG had concerns with the Project’s absorption schedule and with the document adhering to the PFA template and guidelines. GCG worked closely with DPFG, the Project developers, and City staff to determine how best to revise the PFA.

DPFG prepared a third PFA dated September 19, 2008. GCG has conducted a thorough review of this PFA and its related assumptions, and concurs with the conclusions and supporting analysis. GCG also reviewed the PFA to ensure that its assumptions and methodologies are consistent with the City’s PFA template and guidelines.
MEMORANDUM

Date: 9/22/2008

To: Jenny Liaw, Senior Planner, City of Stockton

From: Chris Austin, Greg Angelo, and Tom Woelfel

Re: Tidewater Crossing FIA Errata

Pursuant to your request, the Tidewater Crossing Fiscal Impact Analysis ("FIA"), dated September 19, 2008, has been revised to incorporate the following changes from Goodwin Consulting Group.

FIA

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City Revenues
The Project is estimated to generate approximately $6,668,962 in fiscal revenue for the City at development buildout. The calculations of estimated revenues that employ the case study method are presented on an annual basis in Appendix A, Tables 2 and 3, respectively. These calculations are based on estimated project generated revenues, which differ from City wide per capita revenues. The calculations of estimated revenues that employ the multiplier method are presented on an annual basis in Appendix A: Table 4. A summary description of the revenue funds is presented below.

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City Expenditures
The Project is estimated to incur approximately $6,822,604 in operating expenditures for the City at buildout. The calculations of estimated expenditures for park maintenance, open space/landscaping maintenance, flood control, basin maintenance, road maintenance, and fire, and raw land and finished lot police monitoring use the case study method and are presented in Appendix A, Table 6. These calculations are based on estimated project generated costs, which differ from City wide per capita costs. The calculations for administrative services, city attorney, city auditor, city clerk, city council, city manager, economic development, human resources, non-departmental, parks and recreation (excluding park/open space maintenance), police, public works (excluding road maintenance), library services, Other Post Employment Benefits, and Measure W (police) are presented in Table 5 of Appendix A, and are calculated using the multiplier method. A summary description of the expenditure funds is presented below.
RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:

RECORDING FEES EXEMPT
PURSUANT TO GOVERNMENT
CODE SECTION 27383

Attn: City Clerk

DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF STOCKTON
AND
FRENCH CAMP INVESTMENTS, LLC, MONTAHEINO INVESTMENTS, LLC, TOYON INVESTMENTS, LLC AND
SEQUOIA TIDEWATER INVESTMENT, LLC REGARDING TIDEWATER CROSSING
DEVELOPMENT AGREEMENT
BY AND BETWEEN
THE CITY OF STOCKTON
AND
FRENCH CAMP INVESTMENTS, LLC, MONTAHENO INVESTMENTS, LLC,
TOYON INVESTMENTS, LLC AND SEQUOIA TIDEWATER INVESTMENT, LLC
REGARDING
TIDEWATER CROSSING

This Development Agreement ("Agreement"), dated for the convenience of the Parties this ___ day of ____________, 2008, is entered into by and between the City of Stockton, a California municipal corporation, (hereinafter "City"), and French Camp Investments, LLC, a California limited liability company, Montaheño Investments, LLC, a Nevada limited liability company, Toyon Investments, LLC, a Nevada limited liability company, and Sequoia Tidewater Investment, LLC, a Delaware limited liability company, (hereinafter, collectively, "Developer"), pursuant to section 65864 et seq. of the Government Code of the State of California and City's police powers. City and Developer are, from time to time, also hereinafter referred to individually as a "Party" and collectively as the "Parties."

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and other considerations, the value and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

RECITALS

A. To strengthen the public planning process, encourage private participation in comprehensive planning and reduce the economic risk of development, the Legislature of the State of California adopted Government Code sections 65864 et seq. ("Development Agreement Statute"), which authorize development agreements with any person having a legal or equitable interest in real property providing for the development of that property and establishing certain development rights in the property. In accordance with the Development Agreement Statute, and by virtue of its status as a charter city and attendant home-rule authority under the California Constitution, City has the authority to enter into development agreements, and has reflected that authority pursuant to City Council Resolution No. 2004-368 ("Enabling Resolution"). This Agreement has been drafted and processed pursuant to the Development Agreement Statute and the Enabling Resolution.

B. The approximately 867 +/- acre Tidewater Crossing Master Development Plan area is referred to in this Agreement as the "Property" and/or the "Project Site." Developer currently has a legal and/or equitable interest in certain real property consisting of approximately 581 +/- acres located within the Project Site, as more particularly described and shown on Exhibit A to this Agreement ("Initial Property"). Additionally, it is anticipated that Developer will acquire legal and/or equitable ownership in the remaining property comprising the Project Site and that this Agreement will then be recorded against such additional real property when such additional real property meets the requirements of this Agreement and the Development Agreement Statute regarding such recordation. The Project Site and Initial Property currently are
located outside City's corporate boundary, but within City's "Sphere of Influence," as that phrase is defined in section 56076 of the Government Code, and as determined by the San Joaquin County Local Agency Formation Commission ("LAFCO"). In accordance with Government Code section 65865, this Agreement is legally "effective" as of the Effective Date (defined below), but becomes legally "operative" only upon annexation of the Property. Attached to this Agreement as Exhibit B, and incorporated herein as if set forth in full, is an Annexation Agreement by and between City and Developer concerning the annexation of the Project Site to the City.

C. Developer proposes to plan, develop, construct, operate and maintain on the Project Site a development containing residential, commercial, industrial and, open space/recreational uses, consistent with, and contemplated, permitted and administered by the Tidewater Crossing Master Development Plan, as more particularly described in the "Project Description" portion of the Final Environmental Impact Report ("FEIR") for the Tidewater Crossing Project ("Project"). Any reference in this Agreement to the "Project" shall mean and include the "Project Site," and any reference in this Agreement to the "Project Site" shall mean and include the "Project." In accordance with the California Environmental Quality Act (Pub. Res. Code §§ 21000, et seq.) and its Guidelines (C.C.R., Title 14, §§ 15000, et seq.), as each is amended from time to time ("CEQA"), City certified as adequate and complete the FEIR for the Project.

D. As of the execution of this Agreement by the Parties, various land use regulations, entitlements, grants, permits and other approvals have been adopted, issued, and/or granted by City relating to the Project (collectively "Existing Approvals"), including without limitation, all of the following:

1. The FEIR;
2. The General Plan Amendment;
3. The Tidewater Crossing Master Plan Development ("Master Plan"), including the Fiscal Impact Analysis ("Tidewater Crossing FIA" or "FIA") appended to the Master Plan;
4. The Tidewater Crossing Zoning approvals ("Tidewater Crossing Zoning");
5. The Preliminary Feasibility Analysis ("Tidewater Crossing PFA" or "PFA"); and
6. Amendments to Utility Master Plans.

The Existing Approvals are more particularly described in the FEIR and the resolutions adopting the Existing Approvals.

E. The Project's "Subsequent Approvals" (each referred to individually as a "Subsequent Approval") shall mean those City permits, entitlements, approvals or other grants of authority (and all text, terms and conditions of approval related thereto), that may be
necessary or desirable for the development of the Project, that are sought by Developer, and that are granted by City after the City Council adopts the Approving Ordinance (defined below), including without limitation, a City Resolution of Application for Annexation and subdivision maps. The Project's Existing Approvals and the Subsequent Approvals shall collectively be referred to as the "Project Approvals."

F. For the reasons recited herein, Developer and City have determined that the Project is the type of development for which this Agreement is appropriate. This Agreement will help to eliminate uncertainty in planning, provide for the orderly development of the Project consistent with the planning goals, policies, and other provisions of the City's General Plan and City's Municipal Code, and otherwise achieve the goals and purposes for which the Development Agreement Statute was enacted.

G. On ______________, 2008, following a duly noticed and conducted public hearing, the Planning Commission of the City ("Planning Commission"), the hearing body for purposes of the Development Agreement Statute and the Enabling Resolution, adopted Resolutions that affirmed CEQA compliance for this Agreement, adopted findings that this Agreement is consistent with the City's General Plan and the Existing Approvals and recommended that this Agreement be approved by the City Council.

H. On __________, 2008, following a duly noticed and conducted public hearing, the Stockton City Council ("City Council") introduced and conducted the first reading of Ordinance No. _______, an ordinance that affirms CEQA compliance, that adopts findings that this Agreement is consistent with the City's General Plan and the Existing Approvals, that approves this Agreement, and that directs this Agreement's execution by City ("Approving Ordinance"). The City adopted the Approving Ordinance on __________, 2008 and the Approving Ordinance became effective on __________, 2008 ("Effective Date").

ARTICLE 1
ADMINISTRATION

1.01 Definitions.

(a) As used in this Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section:

   (1) "ADR" shall have that meaning set forth in Section 4.03(c).

   (2) "Agreement" shall have that meaning set forth in the Preamble of this Agreement and Section 5.01(a).

   (3) "Agreement Effective Date" shall have that meaning set forth in Section 1.02(a) of this Agreement.

   (4) "Applicable Law" shall have that meaning set forth in Section 2.01(a) of this Agreement.
(5) "Approving Ordinance" shall have that meaning set forth in Recital paragraph H of this Agreement.

(6) "Assignee" shall have that meaning set forth in Section 4.08(a) of this Agreement.

(7) "General Plan Settlement" shall have that meaning set forth in Section 2.03(a) of this Agreement.

(8) "Bankruptcy Code" shall have that meaning set forth in Section 4.10(b) of this Agreement.

(9) "CEQA" shall have that meaning set forth in Recital paragraph C of this Agreement.

(10) "City" shall have that meaning set forth in the Preamble of this Agreement.

(11) "City Costs" shall have that meaning set forth in Section 4.06(c) of this Agreement.

(12) "City Council" shall have that meaning set forth in Recital paragraph H of this Agreement.

(13) "City Reimbursement Law" shall have that meaning set forth in Section 2.08(b) of this Agreement.

(14) "City Response" shall have that meaning set forth in Section 2.09(d) of this Agreement.

(15) "Climate Action Plan" shall have that meaning set forth in Section 2.03(a) of this Agreement.

(16) "Community Development Director" shall have that meaning set forth in Section 3.03 of this Agreement.

(17) "Construction Codes" shall have that meaning set forth in Section 2.05 of this Agreement.

(18) "Default" shall have the meaning set forth in Section 4.01(a) of this Agreement.

(19) "Developer" shall have that meaning set forth in the preamble of this Agreement, and shall include its successors and assigns.

(20) "Development Agreement Statute" shall have that meaning as set forth in Recital paragraph A of this Agreement.
(21) "Early Climate Protection Action" shall have that meaning set forth in Section 2.03 of this Agreement.

(22) "Effective Date" shall have that meaning set forth in Recital paragraph H of this Agreement.

(23) "Enabling Resolution" shall have that meaning set forth in Recital paragraph A of this Agreement.

(24) "Estoppel Certificate" shall have that meaning set forth in Section 4.07(b) of this Agreement.

(25) "Existing Approvals" shall have that meaning set forth in Recital paragraph D of this Agreement.

(26) "Existing City Laws" shall mean all City ordinances, resolutions, rules, regulations, guidelines, motions, practices and official policies governing land use, zoning and development, permitted uses, density and intensity of use, maximum height, bulk and size of proposed buildings, and other City land use regulations in force and effect on the Effective Date of this Agreement.

(27) "FEIR" shall have that meaning set forth in Recital paragraph C of this Agreement.

(28) "Financing Mechanisms" shall have that meaning set forth in Section 2.04(a) of this Agreement.

(29) "Force Majeure Event" shall have the meaning set forth in Section 4.05(a) of this Agreement.

(30) "Impact Fees" shall have that meaning set forth in Section 2.04(c) of this Agreement.

(31) "JAMS" shall have that meaning set forth in Section 4.03(c) of this Agreement.

(32) "LAFCO" shall have that meaning set forth in Recital paragraph B of this Agreement.

(33) "Legal Effect" shall mean the ordinance, resolution, permit, license or other grant of approval has been adopted by City and has not been overturned or otherwise rendered without legal and/or equitable force and effect by a court of competent jurisdiction, and all applicable administrative appeal periods and statutes of limitations have expired.

(34) "Litigation Tolling" shall have that meaning set forth in Section 1.02(d) of this Agreement.
(35) "Mandated New City Laws" shall have that meaning set forth in Section 2.09(f) of this Agreement.

(36) "Master Plan" shall have that meaning set forth in Recital paragraph D.3 of this Agreement.

(37) "Meet and Confer Period" shall have that meaning set forth in Section 2.09(d) of this Agreement.

(38) "Mortgagee" shall have that meaning set forth in Section 4.10(a) of this Agreement.

(39) "New City Laws" shall have that meaning set forth in Section 2.09(a) of this Agreement.

(40) "Notice of Default" shall have that meaning set forth in Section 4.01(a) of this Agreement.

(41) "Notice of New City Law" shall have that meaning set forth in Section 2.09(d) of this Agreement.

(42) "Objection to New City Law" shall have that meaning set forth in Section 2.09(d) of this Agreement.

(43) "Other Entity" shall have that meaning set forth in Section 3.02(a) of this Agreement.

(44) "Other Permits" shall have that meaning set forth in Section 3.02(a) of this Agreement.

(45) "Oversizing" shall have that meaning set forth in Section 2.08(a) of this Agreement.

(46) "Party" and "Parties" shall have those meanings set forth in the Preamble of this Agreement.

(47) "Planning Commission" shall have that meaning set forth in Recital paragraph G of this Agreement.

(48) "Project" shall have that meaning set forth in Recital paragraph C of this Agreement.

(49) "Project Approvals" shall have that meaning set forth in Recital paragraph E of this Agreement.

(50) "Project Mitigation" shall have that meaning set forth in Section 2.04(a) of this Agreement.
(51) "Project Site" shall have that meaning set forth in Recital paragraph B of this Agreement.

(52) "Property" shall have that meaning set forth in Recital paragraph B of this Agreement.

(53) "Second Notice" shall have that meaning set forth in Section 4.07(c) of this Agreement.

(54) "Statewide Communities Infrastructure Program" (SCIP) shall have that meaning set forth in Section 2.04 (a) of this Agreement and as otherwise sponsored by the California Statewide Communities Development Authority (SCCDA).

(55) "Subdivision Document" shall have that meaning set forth in Section 1.02(b) of this Agreement.

(56) "Subsequent Approvals" and "Subsequent Approval" shall have those meanings set forth in Recital paragraph E of this Agreement.

(57) "Tender" shall have that meaning set forth in Section 4.06(b) of this Agreement.

(58) "Term" shall have that meaning set forth in Section 1.02(a) of this Agreement.

(59) "Third Party Challenge" shall have that meaning set forth in Section 4.06(a) of this Agreement.

(60) "Tidewater Crossing FIA" or "FIA" shall have that meaning set forth in Recital paragraph D.3 of this Agreement.

(61) "Tidewater Crossing PFFP" or "PFFP" shall have that meaning set forth in Recital paragraph D.3 of this Agreement.

(62) "Tidewater Crossing Zoning" shall have that meaning set forth in Recital paragraph D.4 of this Agreement.

(63) "Triggered" shall have that meaning set forth in Section 2.01(a)(4)(D) of this Agreement.

(64) "Vesting Map" shall have that meaning set forth in Section 1.02(b) of this Agreement.

(b) To the extent that any defined terms contained in this Agreement are not defined above, then such terms shall have the meaning otherwise ascribed to them in this Agreement, or if not in this Agreement, by controlling law.
1.02 Term/Subdivision Documents.

(a) The term ("Term") of this Agreement shall commence on the effective date of the Approving Ordinance ("Agreement Effective Date"), and then shall continue (unless this Agreement is otherwise terminated, modified or extended as provided in this Agreement) for the shorter of the following:

1. Twenty (20) years from that date that City grants the first building permit or grading permit for the Project; or,

2. Twenty five (25) years plus one day from December 1st 2008.

(b) Pursuant to Government Code section 66452.6(a) and this Agreement, the term of any tentative map, vesting tentative map, parcel map, vesting parcel map, final map or vesting final maps, or any such new map or any amendment to any such map, or any resubdivision (collectively referred to as "Subdivision Document") relating to the Project shall automatically be extended to and until the end of the Term of this Agreement. The termination of this Agreement shall have no effect on the remaining term of a Subdivision Document that has not yet expired. Any improvement agreement entered into pursuant to the Subdivision Map Act (Gov. Code §§ 66410 et seq.) or other State or local regulation shall have that term determined by City. If this Agreement terminates for any reason prior to the expiration of vested rights otherwise given under the Subdivision Map Act to any vesting tentative map, vesting parcel map, vesting final map or any other type of vesting map on the Property (or any portion of the Property) (collectively, "Vesting Map"), no Vesting Map approved during the Term of this Agreement shall extend the Applicable Law beyond the stated Term of this Agreement and the City rules, regulations and official policies applicable to that portion of the Property covered by such Vesting Map shall become those City rules, regulations and official policies in effect as of the date of the termination of this Agreement; provided, however, that City and Developer may agree to an extension of the Term of this Agreement with respect to the area covered by any such Vesting Map.

(c) Additionally, if Developer notifies the City at the time Developer submits a particular Vesting Map that Developer does not wish such particular Vesting Map to be subject to the benefits and burdens of this Agreement and that instead Developer wishes such particular Vested Map to be subject to the laws that would otherwise apply to such particular Vesting Map if this Agreement were not in place, then such particular Vesting Map shall not be subject to this Agreement and shall instead be subject to the laws that would otherwise apply to such particular Vesting Map if this Agreement were not in place. However, in such a case, the Vesting Map shall contain a condition of approval that shall exactly reflect this Agreement's provisions and requirements concerning "Project Mitigation" (defined below in Section 2.04(a)), which condition of approval shall apply until all development of the Project and Project Site has taken place.

(d) If any "Third Party Challenge" (as that term is defined in Section 4.06 of this Agreement) is filed, then the Term of this Agreement shall be tolled for the period or periods of time from the date of the filing of such litigation until the conclusion of such litigation by dismissal or entry of a final judgment ("Litigation Tolling"). Notwithstanding the foregoing,
regardless of the number of Third Party Challenges that may be filed during the Term of this Agreement, the sum total of such Litigation Tolling shall not exceed five (5) years. The filing of any Third Party Challenge shall not delay or stop the development, processing or construction of the Project, or the approval or issuance of any Project Approvals, unless enjoined or otherwise controlled by a court of competent jurisdiction. The Parties shall not stipulate to the issuance of any such order unless mutually agreed to.

1.03 Other Properties/Memorandum/Operative.

(a) This Agreement may be recorded against other properties only at such time and date as all of the following has occurred:

(1) Such other property is located within the Project Site and its legal description prepared and added to Exhibit A of this Agreement ("Subject Other Property").

(2) Developer has acquired a legal or equitable interest in such Subject Other Property;

(3) Such Subject Other Property is included within the City's Sphere of Influence; and

(4) Based on satisfactory evidence, the City Council has determined that such Subject Other Property has satisfied the requirements of subdivisions (1), (2) and (3) above. Upon such determination, City shall authorize its designated agent to sign the "City Authorization to Record Development Agreement" set forth in Exhibit C of this Agreement. Developer shall record the City Authorization to Record Development Agreement with a copy of this Agreement against the Subject Other Property. Upon the successful recordation of such City Authorization to Record Development Agreement and this Agreement against the Subject Other Property, all rights, responsibilities, benefits and burdens of this Agreement shall inure to the Subject Property.

(b) As used in this Agreement, the term "Operative" shall have that meaning set forth in Government Code section 65865. With respect to a Subject Other Property, this Agreement shall become Operative upon the occurrence of both of the following:

(1) This Agreement being recorded against such Subject Other Property.

(2) The annexation of the Subject Other Property to City within the Term of this Agreement.

ARTICLE 2
APPLICABLE LAW

2.01 Applicable Law—Generally.

(a) As used in this Agreement, "Applicable Law" shall mean all of the items listed below. The order of their importance is the order in which they are listed (with highest
importance listed first, second most important listed second, etc.); in the event of a conflict between them, their order shall determine which one controls (the one listed higher controlling over the one listed lower):

(1) All of the provisions, terms and conditions of this Agreement.

(2) The "Climate Action Plan" and the "Early Climate Protection Actions" (defined in Section 2.03 of this Agreement).

(3) The Existing Approvals. Developer hereby waives any legal or equitable right to challenge administratively or judicially any Existing Approvals including conditions of those Existing Approvals. Such waiver includes acts of protest and/or litigation pursuant to the Mitigation Fee Act and/or other applicable law.

(4) The Subsequent Approvals, provided such Subsequent Approvals are:

(A) In compliance with all controlling California law;

(B) Mutually agreed to by the Parties;

(C) Duly enacted by City; and

(D) "Triggered" by City to be included within this Agreement. As used herein, "Triggered" shall mean when City adopts a Subsequent Approval, it shall make all necessary findings and take all actions required by law, including but not limited to the Development Agreement Statute, to recognize that the Subsequent Approval is consistent with the applicable City of Stockton General Plan and is part of the Applicable Law.

(5) The Existing City Laws that are not in conflict with this Agreement and the Project Approvals.

(6) Any "New City Laws" Developer is subject to under this Agreement; for example, as provided in, but not limited to, Section 2.09. Additionally, any New City Laws to which Developer elects to be subject pursuant to Section 2.09(e).

(b) The Parties acknowledge that the Subsequent Approvals may be processed in stages and therefore one or more Subsequent Approvals may be adopted and approved before other Subsequent Approvals needed for development of the Project are adopted and approved by City.

(c) The Parties shall cooperatively assemble all of the necessary documents to memorialize, to the best of their abilities, the Project Approvals, Existing City Laws, and the terms and conditions contained in this Agreement to assist Developer to maintain the documents
assembled and to provide a continuing reference source for the approvals granted and the ordinances, policies and regulations in effect on the Effective Date of this Agreement.

(d) Any conflicts between and among subparts (1), (2), (3), (4), (5) and/or (6) of subdivision (a) above shall be resolved in favor of the higher listed subpart, i.e., subpart (1) is highest and (6) is lowest.

2.02 Vested Right to Applicable Law.

(a) During the Term of this Agreement, Developer shall have the vested right to develop the Project subject only to, and in accordance with, the Applicable Law, and during the Term of this Agreement City shall have the right to regulate the development and use of the Project subject only to, and in accordance with, the Applicable Law.

(b) Under this Agreement, the Applicable Law will be an expanding body of law, such as, for example, when Subsequent Approvals are granted by City, when the Climate Action Plan and/or Early Climate Protection Actions are adopted by City, and/or when Developer becomes subject to a New City Law pursuant to this Agreement.

2.03 Compliance With Climate Action Plan/Early Climate Protection Actions.

(a) The Parties acknowledge that the City has reached a settlement agreement with the Attorney General and the Sierra Club relative to Sierra Club v. City of Stockton (San Joaquin County Superior Court Case No. CV 034405) and that certain New City Laws must be enacted and imposed by City on development to comply with and implement that settlement agreement. For the purposes of this Agreement, that settlement agreement and all such Plans, Protection Actions, and other New City Laws enacted and imposed by City on development to comply with and implement that settlement agreement shall be collectively referred to in this Agreement as the "General Plan Settlement." In order to implement the General Plan Settlement, City may adopt Climate Action Plans, regulations, and/or other similar New City Laws reflective of the goals, policies, action plans and other terms and conditions of the General Plan Settlement (the General Plan Settlement and all such New City Laws implementing it are collectively referred to in this Agreement as "Climate Action Plan"). However, as of the Effective Date of this Agreement, it appears that the General Plan Settlement may be the subject of a referendum, lawsuit or other challenge. If the General Plan Settlement for any reason is rescinded or otherwise not legally binding, then City nonetheless may adopt Climate Action Plans, regulations, and/or other similar New City Laws reflective of, or similar to, the goals, policies and action plans set forth in the General Plan Settlement (such New City Laws are likewise included in any reference in this Agreement to "Climate Action Plan").

(b) Additionally, pursuant to the General Plan Settlement, the Project shall be subject to the "Early Climate Protection Actions," including the process described in Section 9 (a) through (e) of the General Plan Settlement prior to the adoption of the final discretionary approval leading to the Project's first phase of construction, including the requirement of Planning Commission and City Council public hearings on how the Project has addressed the steps set forth in Section 9(a) (1) through 9(a)(8). For the purposes of the Project and this Agreement, the City shall ensure that the granting of a Subsequent Approval is coordinated with
the completion of that process. If no Subsequent Approvals are needed, then Developer’s subdivision map approval shall be modified pursuant to the requirements of the Stockton Municipal Code in order to ensure that the Project is compliant with the requirements of the Early Climate Protection Actions.

(c) Likewise, the Climate Action Plan (whether adopted as a product of the General Plan Settlement or adopted by independent action of the City (if the General Plan Settlement is for any reason rescinded or otherwise not legally binding)) shall apply in full force and effect to the Project and Project Site. As such, the Parties recognize that amendments to the Project’s Existing Approvals and Subsequent Approvals, including without limitation the General Plan Amendment, the Master Plan, and the Tidewater Crossing Zoning may be needed to comply with the Climate Action Plan, and that such amendments must be approved by City before any physical disturbance of the Project Site is allowed to take place.

(d) Notwithstanding any of the foregoing, if the City does not adopt a Climate Action Plan and/or Early Climate Protection Actions that applies to development beyond this Project, then this Project shall not be subject to such Climate Action Plan and/or Early Climate Protection Actions.

2.04 Project Impacts and Costs.

(a) Overarching Requirement Regarding Project Impacts. Notwithstanding any other express or implied term or condition of this Agreement to the contrary, throughout the Term of this Agreement, the full and complete mitigation of all environmental, physical, fiscal and other impacts of the Project and the Project Site on the community and on the City of Stockton and its services, facilities, operations and maintenance (collectively, "Project Mitigation") shall be borne by and shall be the sole and exclusive responsibility of the Project and Project Site (and the Developer who is the owner of same). Such Project Mitigation may include a mix of different approaches, including without limitation, Developer construction of and/or financing of such services, facilities, operations and maintenance through the payment of impact fees or other fees, taxes, levies, assessments, or other financing mechanisms including without limitation Landscaping and Lighting Districts, Mello-Roos Districts, Community Facilities Districts, Assessment Districts, Tax-Exempt and Taxable Financing Mechanisms, Maintenance Districts, Homeowners Associations, and participation in the Statewide Communities Infrastructure Program (collectively, "Financing Mechanisms"). City shall cooperate with Developer in good faith to determine and facilitate the necessary Project Mitigation and necessary Financing Mechanisms. However, the ultimate scope and extent of such Project Mitigation, and which combination of Financing Mechanisms should be employed relating to such Project Mitigation to assure success of the Project Mitigation, shall be determined by City, in its sole and exclusive discretion, with City taking into account and guided by the FIA and the PFA and other similar studies and plans (approved by City), as well as City taking into account and guided by the pre-existing rights of others in the existing and future public services and facilities (including their operations and maintenance) that Developer may seek to use. However, City shall not lien nor otherwise record encumbrances on Developer’s property relative to a Financing Mechanism without first following controlling law. In the event that controlling law requires Developer’s consent for the particular Financing Mechanism, which Developer consent is not provided, then City shall not pursue such Financing Mechanism.
Instead, City shall pursue another Financing Mechanism that is available (because it either does not require Developer consent by law or does require Developer consent by law and such consent is given by Developer) and that will likewise ensure the success of the Project Mitigation. If no Financing Mechanism is available to fund the Project Mitigation, then the Project shall not progress forward.

(b) Project Facilities and Infrastructure. Consistent with subdivision (a) above, City has required the preparation of both the FIA and the PFA to ensure that: (1) there shall be no cost to City for the facilities and infrastructure needed to serve the Project and/or the provision of municipal services to the Project (including the operation and maintenance of all such facilities, infrastructure and services); and (2) that all costs associated with the facilities and infrastructure needed to serve the Project and/or the provision of municipal services to the Project (including the operation and maintenance of all such facilities, infrastructure and services) shall be borne by the Project alone.

(1) City, in determining how to establish any and all Financing Mechanisms, shall consider the following principles:

(A) The level of facilities and infrastructure needed to serve the Project and/or the provision of municipal services to the Project (including the operation and maintenance of all such facilities, infrastructure and services) shall be at least equal or superior to the facilities, infrastructure and/or provision of municipal services (including the operation and maintenance of all such facilities, infrastructure and services) provided within the existing City limits on the Effective Date.

(B) Any costs associated with such Financing Mechanism shall be borne by the Project.

(2) City and Developer shall meet on an annual basis concurrent with City's annual budgeting process to review anticipated City expenses, revenues and allocations.

(c) Impact Fees. As part of the Project and Project Site's sole and exclusive obligation (and the Developer's as the owner of same) to cover the full and complete mitigation of all environmental, physical, fiscal and other impacts of the Project and the Project Site on the community and on the City of Stockton and its services, facilities, operations and maintenance, (i.e., Project Mitigation) and as part of City's obligations to set and determine Financing Mechanisms, City shall determine whether Developer shall pay all or only some or some portion of the categories and rates of "Impact Fees" imposed by City on development (or collected by City from development) in legal effect at the time any such Impact Fees become due and payable under City law, or whether some other Financing Mechanism will adequately fund such Project and Project Site's Project Mitigation obligations. For the purposes of this Agreement, Impact Fees shall include those fees used to help mitigate the environmental, physical, fiscal and other impacts of the Project and the Project Site on the community and on the City of Stockton.
(d) Processing Fees. The Project and Project Site (including Developer as owner of same) shall be responsible for the costs to City of processing any and all Developer-requested land use approvals, including without limitation, building permits, plan checks and other similar requests for City permits and entitlements, when such costs are incurred by City. City shall determine whether such future City processing costs are already fully and adequately included in the FIA. If the City determines in good faith that the FIA already fully and adequately includes such future City processing costs, then no addition funding requirement shall be imposed by City. If the City determines in good faith that the FIA does not already fully and adequately include such future City processing costs, then the City shall impose those additional funding requirement needed to ensure that the processing costs to the City are fully covered by the Project and Project Site (including Developer as owner of same). Further, if additional, accelerated, or more frequent inspections are requested by Developer of City than would otherwise take place in City’s ordinary course of business, then City may either hire additional contract inspectors, or City may hire a full or part time employee. If City hires additional contract inspectors, then Developer shall reimburse City, on a monthly basis in arrears, the cost to City of hiring such additional contract inspectors, plus Developer shall pay to City an additional ten percent (10%) of such cost to City on the same payment schedule. City shall use such additional 10% to defray administrative costs. If City hires a full or part time employee, then Developer shall reimburse City, on a monthly basis, in arrears, for a pro rata share of the total cost to the City of such employee, plus ten percent (10%) for administrative costs, for the period from hire to the end of the Term of this Agreement.

2.05 Construction Codes.

With respect to the development of any or all of the Project or the Project Site, Developer shall be subject to the California Building Code and all those other State-adopted construction, fire and other codes applicable to improvements, structures, and development, and the applicable version or revision of said codes by local City action (collectively referred to as "Construction Codes") in place at that time that a building, grading or other permit subject to such Construction Codes is submitted to City for approval, provided that such Construction Codes have been adopted by City and are in effect on a City-wide basis.

2.06 Timing of Development.

The parties acknowledge that the rate, phasing, timing and sequencing (collectively, for this Section only, "phasing" or "phases") of the development of the Project Site depends upon numerous factors, including the Climate Action Plan. In particular, the Parties recognize that the phasing of development of the Project Site shall be governed by the Climate Action Plan. Provided that the requirements of the Climate Action Plan have been satisfied with respect to the establishment of the phasing of the development of the Project Site, Developer shall have the right to develop the Project in such phases as Developer deems appropriate within the exercise of its subjective business judgment.

2.07 Improvements.

In any instance where Developer is required to install improvements, Developer shall obtain City approval of the plans and specifications and the timing and manner of the installation
of improvements, and provided Developer has supplied all information required by City, City shall review and act on the application for such approval with good faith and in a reasonable manner.

2.08 Overcapacity, Oversizing.

(a) City may require Developer to construct on-site and off-site improvements in a manner that provides for oversizing or overcapacity so that the constructed improvement will serve other development or residents or facilities and service outside of the Project ("Oversizing"). Such Oversizing shall be reasonable in scope. The Parties recognize that the City shall not require any Oversizing from Developer except in connection with the Project Approvals and in accordance with provisions of the Subdivision Map Act and Applicable Law.

(b) Developer's right to receive credits and reimbursements shall be governed by City's "Public Facilities Fee Program Administrative Guidelines" and other controlling City law (collectively, "City Reimbursement Law"). City shall consider and act upon those Developer's requested amendments to the City Reimbursement Law within one hundred twenty (120) days of Developer's submission of such amendments to City. Such Developer requested amendments may include, without limitation, a request that the term of a Reimbursement Agreement be up to thirty-five (35) years.

(c) In the event that City requires Developer to install a specific improvement (for example, a traffic signal), Developer's obligation to pay the fees otherwise owing under this Agreement regarding the category of improvement the Developer is installing shall be satisfied by the installation of such improvement; and if the costs of the improvement to Developer exceed Developer’s fee obligation, Developer shall be entitled to credits or reimbursement of such improvement costs in excess of Developer's obligation, consistent with or pursuant to the City Reimbursement Law and any Reimbursement Agreement.

2.09 New City Laws.

(a) For purposes of this Agreement, "New City Laws" shall mean any and all City ordinances, resolutions, orders, rules, official policies, standards, specifications and other regulations, whether adopted or enacted by City, its staff or its electorate (through their powers of initiative, referendum, recall or otherwise) that is not a Subsequent Approval, that takes Legal Effect after the Effective Date of this Agreement, and that applies City wide.

(b) City may apply any New City Law to the Project that is not in conflict with this Agreement and the Applicable Law it describes. City shall not apply any New City Law to the Project that is in conflict with this Agreement and the Applicable Law it describes, nor otherwise reduces the development rights or assurances provided by this Agreement. The Climate Action Plan is not in conflict with this Agreement and the Applicable Law it describes, nor does it otherwise reduce the development rights or assurances provided by this Agreement. As such, the Climate Action Plan is part of the Applicable Law and shall apply to the Project and the Project Site. This Agreement embraces and enforces the Climate Action Plan. Other than the Climate Action Plan, City shall not apply to the Project nor Project Site any no-growth or slow-growth ordinance, measure, policy, regulation or development moratorium either adopted
by City or by a vote of the electorate and whether or not by urgency ordinance, interim ordinance, initiative, referendum or any other change in the laws of the City by any method or name which would alter the Applicable Law that may stop, delay, or effect the rate, timing or sequence of development. Consistent with the foregoing and by way of example without intended limitation, the Climate Action Plan requires that Developer shall be subject to those New City Laws relating to “Build-It-Green” (green point rated guidelines) or a green building program in effect at the time of Developer building permit application for development within the Project Site, and, as to non-residential construction (i.e., commercial, industrial) within the Project Site, Developer shall be subject to those New City Laws relating to LEED Silver-certified standards or a green building program in effect at the time of building permit application. However, such non-residential construction would not be required to participate in the formal LEED Silver inspection and certification process.

(c) Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, a New City Law shall be deemed to be in conflict with this Agreement or the Applicable Law or to reduce the development rights provided hereby if the application to the Project would accomplish any of the following results, either by specific reference to the Project or as part of a general enactment which affects or applies to the Project:

(1) Except as may be provided in the Climate Action Plan, change any land use designation or permitted use of the Project Site allowed by the Applicable Law or limit or reduce the density or intensity of the Project, or any part thereof, or otherwise require any reduction in the total number of residential dwelling units, square footage, floor area ratio, height of buildings, or number of proposed non-residential buildings, or other improvements;

(2) Except as may be provided in the Climate Action Plan, limit or control the availability of public utilities, services, or facilities otherwise allowed by the Applicable Law;

(3) Except as may be provided in the Climate Action Plan, limit or control the rate, timing, phasing or sequencing of the approval, development, or construction of all or any part of the Project in any manner, or take any action or refrain from taking any action that results in Developer’s having to substantially delay construction of the Project or require the acquisition of additional permits or approvals by the City other than those required by the Applicable Law;

(4) Except as may be provided in the Climate Action Plan, limit or control the location of buildings, structures, grading, or other improvements of the Project in a manner that is inconsistent with or more restrictive than the limitations in the Existing Approvals and the Subsequent Approvals (as and when they are issued);

(5) Except as may be provided in the Climate Action Plan, limit the processing of Subsequent Approvals.

(d) If City determines that it has the right under this Agreement to impose/apply a New City Law on the Property/Project, it shall send written notice to Developer of that City determination ("Notice of New Law"). Upon receipt of the Notice of New City